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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 213a

[INS No. 1913-98]

Additional Information on the Affidavit of Support

Under Section 213a of the Act, Form I-864

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Clarification of policy.

SUMMARY: On October 20, 1997, the Immigration and Naturalization Service (Service) published an interim rule in the **Federal Register** establishing the provisions for sponsorship of family and certain employment-based immigrants under the new legally enforceable affidavit of support. The Form I-864, Affidavit of Support Under Section 213A of the Act, was released on that same date. This document provides information on four issues: reduction of required supporting documentation; preferred order of documentation; form revision dates; and 1998 poverty guidelines.

First, the document clarifies the Service policy concerning whether the sponsor must submit a separate copy of all supporting documentation for each dependent. This clarification is necessary to reduce the amount of paperwork being submitted by the sponsor. Second, this document provides information on the order in which the Service would like to have affidavits of support and accompanying documentation submitted. Third, this document explains that the Service has corrected minor errors in the first edition of Forms I-864, I-864A, and I-865. Finally, the document lists the new 1998 poverty guidelines.

DATES: This document is effective Monday May 18, 1998.

FOR FURTHER INFORMATION CONTACT: Miriam Hetfield, Immigration and Naturalization Service, Benefits Division, 425 I Street, NW., Room 3214, Washington, DC 20536, Telephone 202-514-5014 or Lisa Roney, Immigration and Naturalization Service, Office of Policy and Planning, Room 6052, Washington, DC 20536, Telephone 202-353-0249.

SUPPLEMENTARY INFORMATION:

Reduction in required supporting documentation.

This document clarifies Service policy concerning the documentary evidence that must be provided with an affidavit of support (Form I-864) that is filed by an applicant for an immigrant visa or for adjustment of status. According to 8 CFR 213a.2(c)(2), the sponsor is required to provide considerable documentation, including copies of his or her Federal individual income tax returns for the most recent 3 tax years, evidence of current employment, and other documentation as evidence that the sponsor's income is sufficient to meet the income requirement that applies in the case. The sponsor must file a separate Form I-864 and I-864A, if used, for each dependent family member who accompanies the principal beneficiary of the visa petition, although these forms may be photocopies so long as the signature and notary information is original. 8 CFR 213.2(a)(1).

The question has arisen whether the sponsor must also submit a separate copy of all the supporting documentation with each separate Form I-864 and any Forms I-864A for each dependent. To avoid unnecessarily increasing the amount of paperwork for the sponsor, the sponsored immigrant, and the Government, the Service has determined the following. A sponsor must submit a separate Form I-864 and, if used, any separate Forms I-864A, for the principal sponsored immigrant and for each accompanying family member. However, the sponsor needs to submit only one copy

of his or her Federal income tax returns for the 3 most recent tax years and one copy of any other supporting documentation even if there are accompanying family members. The sponsor **does not** need to submit duplicate copies of tax returns or other supporting documents for accompanying family members. In those cases where there are accompanying family members, the consular officer or immigration officer will write the A-number of the principal beneficiary in the “agency use” box of the Form I-864 for each family member accompanying the principal beneficiary. This annotation will make it possible to retrieve the documentary evidence from the principal beneficiary's A-file, should it become necessary to do so.

The Service has also determined that it should clarify what the Service will consider to be sufficient compliance with the requirement in 8 CFR 213a.2(a)(1) that the Forms I-864 and I-864A submitted on behalf of accompanying family members must bear original signatures and notarizations. Under rule 1003 of the Federal Rules of Evidence, a photocopy has the same evidentiary value as an original document, unless the authenticity of the photocopy is disputed. While the Federal Rules of Evidence do not govern sponsorship determinations, the Service believes that following the principle set forth in rule 1003 in this context will serve to benefit potential sponsors by reducing burdensome replication of paperwork. Accordingly, the Service will consider a sponsor to have complied with 8 CFR 213a.2(a)(1) if the sponsored immigrant(s) submit(s) to the consular officer, immigration officer, or immigration judge, (a) on behalf of the principal beneficiary, the original Forms I-864 and I-864A, bearing the sponsor's original signature and an original notarization, and (b) on behalf of each of the accompanying family members included in the original Forms I-864 and I-864A, clear and true photocopies of the signed and notarized Forms I-864 and I-

864A filed on behalf of the principal beneficiary. The Service will make the necessary change to 8 CFR 213a.2(a)(1) in the final rule, but considers strict enforcement of the requirement in the meantime to be unduly burdensome. Since the requirement that the Forms I-864 and I-864A for the accompanying family members must bear original signatures and notarizations is a rule of agency practice, and this new approach to enforcement of the requirement is a general statement of policy, 5 U.S.C. 553 permits the Service to modify its enforcement of the requirement without prior notice and comment.

This policy on reduction in required supporting documentation applies for derivative beneficiaries applying for immigrant visas or adjustment of status with the principal beneficiary. If two related aliens are the beneficiaries of separate visa petitions, so that neither is a derivative beneficiary, separate documentary evidence in support of each Form I-864 and any Forms I-864A must be provided, and the Forms I-864 and I-864A for each principal beneficiary must bear the sponsor's original notarized signature. For family members who are following to join rather than accompanying a principal beneficiary, a separate Form I-864 and any Forms I-864A, with the sponsor's original notarized signature and supporting documentation, must be provided when the alien applies for an immigrant visa or for adjustment of status, in order to follow to join the principal beneficiary. 8 CFR 213a.2(d). This policy on reduction in required supporting documentation also applies when there is more than one alien following to join the principal beneficiary; only one set of supporting documents is required in support of all derivative beneficiaries following to join at that time. If more than one family member follows to join at the same time, moreover, only one family member needs to submit Forms I-864 and I-864A with original signatures and notarizations; the other

family members may submit true and clear photocopies of that signed and notarized original. The immigration or consular officer will note in the "agency use" box the visa number or A-number of the file where the supporting documentation will be located.

Preferred order of documentation

The Service is providing notice on the order in which it would like to have aliens seeking adjustment of status to package affidavits of support and supporting documentation for submission to the Service. Documents for the principal intending immigrant should be placed on top and in the following order: first, the petitioner's I-864 with the signature notarized; second, copies of the petitioner's Federal tax returns for the 3 most recent tax years; third, evidence of the petitioner's employment; fourth, evidence of the petitioner's assets (if used to qualify); fifth, any Forms I-864A submitted by the petitioner's household members with all original signatures notarized, copies of the household members' Federal tax returns for the 3 most recent tax years, household members' evidence of employment, and evidence of assets (if used to qualify). Next should be documentation for dependents. This will include, for each dependent, a photocopy of the signed and notarized Forms I-864 and I-864A filed on behalf of the principal immigrant. Documentation for any joint sponsor(s) should follow subsequently in the same order as provided above for the petitioner.

Form revision dates

The first edition of Forms I-864, I-864A, and I-865 were dated October 6, 1997. The Service subsequently corrected two minor errors and released an updated version of each form with a revision date of January 21, 1998. The minor errors were a technical correction made in

Part 1 of Form I-864A , and the new address of the Texas Service Center on Form I-865. Both the October 6, 1997 and the January 21, 1998, versions of these forms may be used.

New 1998 poverty guidelines

The October 20, 1997, interim rule establishing the provisions for sponsorship under the new affidavit of support, provided that immigration and consular officers will begin using the new poverty guidelines on the first day of the second month after the Department of Health and Human Services (HHS) published them in the **Federal Register**. This year HHS published the new guidelines on February 24. Thus, officers will use the new poverty guidelines to evaluate cases adjudicated as of April 1, 1998, regardless of when the application for an immigrant visa or adjustment of status was submitted to the Government. Applicants are not required to submit new Forms I-864 to reflect the new poverty guidelines. The following are the poverty guidelines for 1998:

For the 48 Contiguous States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam:

<u>Sponsor's Household Size</u>	<u>100% of Poverty Line</u>	<u>125% of Poverty Line</u>
2	\$10,850	\$13,562
3	13,650	17,062
4	16,450	20,562
5	19,250	24,062
6	22,050	27,562
7	24,850	31,062

8	27,650	34,562
	Add \$2,800 for each additional person.	Add \$3,500 for each additional person.

For Alaska:

<u>Sponsor's Household Size</u>	<u>100% of Poverty Line</u>	<u>125% of Poverty</u>
2	\$13,570	\$16,962
3	17,070	21,337
4	20,570	25,712
5	24,070	30,087
6	27,570	34,462
7	31,070	38,837
8	34,570	43,212
	Add \$3,500 for each additional person.	Add \$4,375 for each additional person.

For Hawaii

<u>Sponsor's Household Size</u>	<u>100% of Poverty Line</u>	<u>125% of Poverty Line</u>
2	\$12,480	\$15,600
3	15,700	19,625
4	18,920	23,650
5	22,140	27,675
6	25,360	31,700

7	28,580	35,725
8	31,800	39,750
	Add \$3,220 for each additional person.	Add \$4,025 for each additional person.

Dated: April 30, 1998

Doris Meissner,

Commissioner, Immigration and

Naturalization Service.